

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JIMMIE HARDAWAY, JR., LARRY A. BOYD,
FIREARMS POLICY COALITION, INC., and
SECOND AMENDMENT FOUNDATION,

Plaintiffs,

v.

AFFIDAVIT IN RESPONSE TO
PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

KEVIN P. BRUEN, in his official capacity as
Superintendent of the New York State Police,
BRIAN D. SEAMAN, in his official capacity
as District Attorney for the County of Niagara,
New York, and JOHN J. FLYNN, in his offi-
cial capacity as District Attorney for the County
of Erie, New York,

Case #: 1:22-cv-00771-JLS

Defendants.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

KENNETH R. KIRBY, being duly sworn, deposes and says:

1. I am an Assistant Erie County Attorney, assigned by Erie County Attorney
Jeremy C. Toth to represent the Defendant, JOHN J. FLYNN, in his official capacity as District
Attorney for the County of Erie, New York, in the above-entitled action.

2. Previously, I filed and served the Responding Affidavit of Erie County District
Attorney John J. Flynn in response to the Plaintiffs' motion for a temporary restraining order
and a preliminary injunction (Doc. #25, incorporated herein by reference). At paragraph 5 of his
said affidavit, Mr. Flynn averred as follows: "Beaues the recently enacted gun control legislation
which the plaintiffs challenge as unconstitutional is a creature of New York State law, I

respectfully leave to the State-related co-defendant the defense of the said legislation from the plaintiffs' said challenge."

3. My client takes no position on the Plaintiffs' motion for a preliminary injunction, except that he asserts, and respectfully submits, that no award of attorney fees, costs, or disbursements can properly be entered against him inasmuch as he had nothing to do with the New York Legislature's enactment of the challenged gun control legislation.

WHEREFORE, deponent respectfully asks that if the Plaintiffs' motion for a preliminary injunction is granted, that any Order granting said motion not contain any provision for the award of attorney fees, disbursements, or costs as against Defendant, JOHN J. FLYNN, in his official capacity as District Attorney for the County of Erie.

Subscribed and sworn to before me this 27th day of October,
2022 by Assistant Erie County Attorney Kenneth R.
Kirby, known by me and known to me to be the same.

s/ Kenneth R. Kirby
KENNETH R. KIRBY, ESQ.
Ass't. Erie Co. Att'y.

s/ Danette Drennen
NOTARY PUBLIC – STATE OF NEW YORK
Qualified in Erie County
My Commission Expires 2/14/23

CERTIFICATE OF SERVICE

I, Kenneth R. Kirby, hereby certify that on the 27th day of October, 2022, I served the foregoing upon the following via the Court's EM/CMF electronic filing/service system:

PHILLIPS LYTLE LLP

Nicolas J. Rotsko, Esq.
Attorneys for Plaintiffs
Office & P. O. Address:
One Canalside
125 Main Street
Buffalo, New York 14203-2887
Tel: (716)847-5467
Email: NRotsko@phillipslytle.com

Brian P. Crosby, Esq.
Niagara County Attorney
Attorneys for Co- Defendant

Brian D. Seaman, in his official capacity as District Attorney for the County of Niagara, New York
175 Hawley Street
Lockport, New York 14094
Telephone: (716) 439-7105
Email: bcrosby@gmclaw.com

Dated: Buffalo, New York
October 27, 2022

Yours, etc.,

JEREMY C. TOTH, ESQ.

Attorney appearing specially and for limited purpose only for JOHN J. FLYNN, in his official capacity as District Attorney for the County of Erie, New York

By: s/Kenneth R. Kirby, Esq.

KENNETH R. KIRBY, ESQ.

Ass't. Erie Co. Att'y.

Office & P. O. Address:

Erie County Department of Law
Edward J. Rath County Office Building
95 Franklin Street, Room 1634
Buffalo, New York 14202
Tel: (716)858-2226
Email: Kenneth.kirby@erie.gov